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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,625	09/29/2003	Lauren D. Worley	306213	4697
33042	7590	03/01/2006	EXAMINER	
LEYDIG, VOIT & MAYER, LTD. (SEATTLE OFFICE) TWO PRUDENTIAL PLAZA SUITE 4900 CHICAGO, IL 60601-6780			AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,625

Applicant(s)

WORLEY ET AL.

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/21/05</u> .  | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> .         |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2, 4, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Regarding claim 2, the term "primarily downward" is indefinite since it is unclear as to what the metes and bounds of the vent face are and since the disclosure does not give light to what would be defined as "primarily downward".
4. Regarding claims 4 and 12, the term "substantially linearly" and "substantially stiff" are indefinite since it is unclear as to the metes and bounds of the segments of the stay and since the disclosure does not give light to what would be defined as "substantially linearly" or "substantially stiff".

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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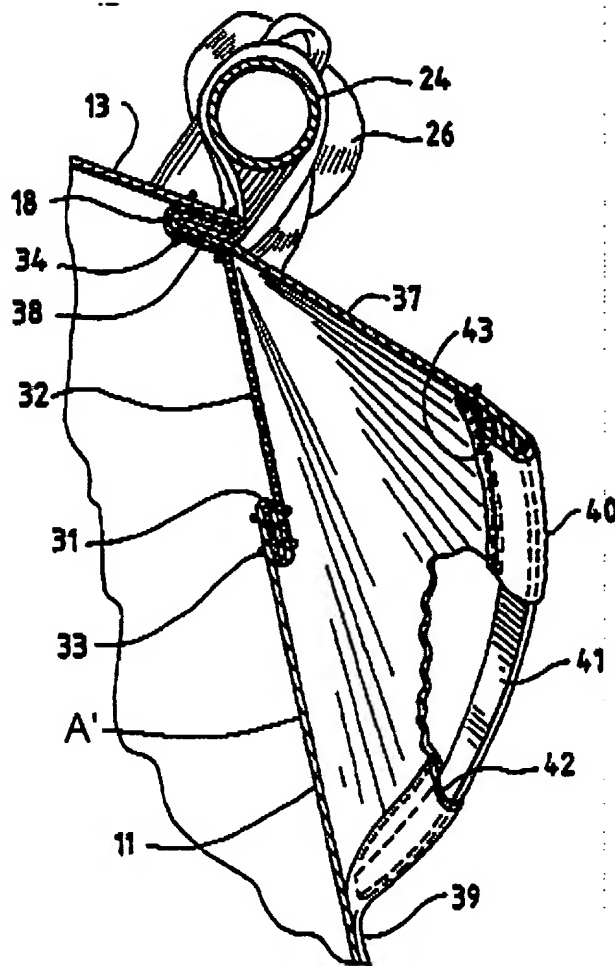
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 9, and 23 are rejected under 35 U.S.C. 102(a) as being anticipated by "Spring 2004 Camping Gear" in view of secondary reference of "sportsmansguide.com". The "Spring 2004 Camping Gear" discloses on page 3 tent features and in particular a tent feature called the cyclone venting system, which creates a vortex of ventilation to exhaust hot air up out of the roof and allows cool air in through a lower vent or vents. On page 4 of the "Spring 2004 Camping Gear" is a list of style names of tents that are available. The "sportsmansguide.com" reference gives the details of the Columbia Ice Crest sport dome, which is one of the tents in the list. This tent has the cyclone venting system as seen on page 1. Now focusing on the details of the tent as seen in figures 1-5 of attachment A, which is the marked up copy of sportsmansguide.com. Figure 4 is a close up detail of the tent with the rain fly as seen in figure 1. Figure 5 is a close up detail of the tent without the rain fly as seen in figure 2. The Ice crest dome is a combination (A') tent and rain fly (B') where the rain fly (B') is removable as seen in figure 2. The tent (A') comprises a lower portion (C') formed of a water-repellent material and positioned at a lower half of the tent (A'). An upper portion (D') being formed of a mesh material (J'). When the tent is erected as seen in figures 1, 2, 4, and 5 the lower portion (C') extends adjacent the ground and the upper portion (D') extends toward a top of the tent (A'). A vent (E') is in the lower portion (C') and a rain fly (B') extends over the tent (A'). The open side of vent (E') faces primarily downward when the tent (A') is erected as best seen in figure 5. The vent (E') comprises an upper flap (F'), a lower flap (G'), and a flexible stay (H'), which is a guy

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line that extends from the upper flap (F') to a stake or other object away from the tent (A'). The vent (E') is in a location below the rain fly (B') as seen in figure 1.

7. Claim 11 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,365,961 to Bamber. Bamber teaches a vent for a fabric structure of a tent. The vent comprises an upper flap (37) and a lower flap (A') beginning under the upper flap (37) and extending beyond the upper flap (37) and integral with the side panel (11) and connected to the mesh material (30). A flexible resilient stay (41) that extends between the lower flap (A') and the upper flap (37) in a sleeve sewn on the free edge (40) of the upper flap (37). The stay (41) being made of material so that it is resilient enough to biased into a sufficiently stiff arrangement so that the flexible stay (41) support the upper flap (37) of the vent during use as seen in figures 2 and 3. The flexible stay (41) is flexible enough that the stay may bend so that vent is collapsible during storage. Note: "may bend" provides the limitation that the stay is capable of bending but not required to bend during storage to meet this limitation. The flexible stay (41) is considered substantially linearly even when in the somewhat arched shape that biases the vent open as seen in figure 2.



Bamber '961 Figure 3

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Spring 2004 Camping Gear" in view of secondary reference of "sportsmansguide.com" and in view of US Patent 5,365,961 to Bamber. "Spring 2004 Camping Gear" in view of secondary reference of "sportsmansguide.com" discloses every element as claimed and discussed above except the stay is biased into a sufficiently stiff arrangement so the the stay supports the upper flap of the vent during use. Bamber teaches a vent for a fabric structure of a tent. The vent comprises an upper flap (37) and a lower flap (A') beginning under the upper flap (37) and extending beyond the upper flap (37) and integral with the side panel (11) and connected to the mesh material (30). A flexible resilient stay (41) that extends between the lower flap (A') and the upper flap (37) in a sleeve sewn on the free edge (40) of the upper flap (37). The stay (41) being made of material so that it is resilient enough to biased into a sufficiently stiff arrangement so that the flexible stay (41) support the upper flap (37) of the vent during use as seen in figures 2 and 3. The flexible stay (41) is flexible enough that the stay may bend so that vent is collapsible during storage. Note: "may bend" provides the limitation that the stay

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is capable of bending but not required to bend during storage to meet this limitation. The flexible stay (41) is considered substantially linearly even when in the somewhat arched shape that biases the vent open as seen in figure 2. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the tent and vent of "Spring 2004 Camping Gear" in view of secondary reference of "sportsmansguide.com" by adding the flexible stay in the outer edge of the upper flap as taught by Bamber so that the vent is setup without any manipulative steps (Bamber '961, col. 1, lines 39-41).

11. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Spring 2004 Camping Gear" in view of secondary reference of "sportsmansguide.com" and in view of US Patent 5,365,961 to Bamber as applied to claim 8 above, and further in view of US Patent 6,286,531 to Joo-Tai. "Spring 2004 Camping Gear" in view of secondary reference of "sportsmansguide.com" and modified by Bamber discloses every element as claimed and discussed above except the flexible stay comprising a plurality of segments, the segments each with adjacent flat edges, and an elastic cord extending through the segments and tensioning the segments together. Joo-Tai teaches a tent pole (1) with a covering (2). The tent pole includes segments (1', 1") that have flat edges (4, 4') that are tensioned together by an elastic cord (5). Figure 3 shows that the segments are flexible enough to bend to a horseshoe shape. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify "Spring 2004 Camping Gear" in view of secondary reference of "sportsmansguide.com" and in view of Bamber by substituting the flexible stay with one of a plurality of segments with



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a covering as taught by Joo-Tai so that the stay has greater elasticity, strength, and a covering to protect the user or tent if the stay were to break (Joo-Tai '531, Col. 1, lines 25-37).

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Spring 2004 Camping Gear" in view of secondary reference of "sportsmansguide.com" and in view of US Patent 6,021,796 to Vavra. "Spring 2004 Camping Gear" in view of the secondary reference of "sportsmansguide.com" discloses every element as claimed and discussed above except a secondary vent adjacent to the apex of the tent. Vavra teaches a tent (1) with vents (133) located at the apex of the tent (1). At the time of invention it would have been obvious for a person of ordinary skill in the art to modify the tent of "Spring 2004 Camping Gear" in view of the secondary reference of "sportsmansguide.com" by adding a second vent to the apex as taught by Vavra to create increased ventilation.

13. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,365,961 to Bamber in view of US Patent 6,286,531 to Joo-Tai. Bamber discloses every element as claimed and discussed above except the flexible stay comprising a plurality of segments, the segments each with adjacent flat edges, and an elastic cord extending through the segments and tensioning the segments together. Joo-Tai teaches a tent pole (1) with a covering (2). The tent pole includes segments (1', 1") that have flat edges (4, 4') that are tensioned together by an elastic cord (5). Figure 3

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shows that the segments are flexible enough to bend to a horseshoe shape. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the vent of Bamber by substituting the flexible stay with one of a plurality of segments with a covering as taught by Joo-Tai so that the stay has greater elasticity, strength, and a covering to protect the user or tent if the stay were to break (Joo-Tai '531, Col. 1, lines 25-37).

14. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,365,961 to Bamber. Bamber discloses every element as claimed and discussed above except where the fabric structure is a tent with a rain fly or a canopy. It would have been obvious for a person of ordinary skill in the art to provide the vent as taught by Bamber for a tent with a rain fly or a canopy since those structures are well known, well known to have vents, and are well known to need vents as disclosed in the specification of this application.

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 1-16 and 18-23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6,151,841 to Green disclose a portable shelter structure that has vents both at a lower portion and at a portion near the apex. US Patent Publication 2005/0120640 to Cantwell discloses a tent ventilation structure that has vents at a lower portion and an upper portion. US Patent 2,230,454 to Frisener discloses a vent with a stay where the vent opens primarily downward. Japanese Patent 9,221,941 to Tanaka discloses a rain fly sheet for a tent with a vent located near the apex of the tent. Japanese Patent 7,139,228 to Yoshiaki discloses a tent with a vent in

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the lower portion and a vent near the apex. The publication "trailspace.com" discloses a tent that has vents with stay near the apex and vents along the lower edge. The publication mountainhardwear.com discloses a tent that has vents with stay near the apex and vents along the lower edge.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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